IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4012 of 2006
Date of Decision: 14.11.2006

Mohan Lal Sharma ...Appellant

Versus

Mahabir Parshad and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri C.B. Goel, Advocate, for the appellant.

JUDGMENT

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for possession of the shop in dispute after termination of the tenancy of the appellant, was decreed.

It is the case of the plaintiff that the shop was newly constructed in the month of October, 1993 with the prior approval and sanction of the building plan from the Municipal Committee, Bhiwani on 26.8.1993. The same was let out to the defendant with effect from 1.3.1997 at the monthly rent of Rs.1600/-, excluding tax. It was pleaded that the shop in dispute is exempt from the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973, and that the tenancy of the defendant has been terminated by issuing a notice dated 17.8.2001 under Section 106 of the Transfer of Property Act, 1882. The learned trial Court passed a decree for possession, which decree has been affirmed in appeal.

Learned counsel for the appellant has vehemently argued that in terms of the lease Exhibit D.1, the tenancy of the appellant could not have been terminated as it was a tenancy in perpetuity. The fact that such lease was executed is admitted as the plaintiffs have relied upon such lease in the notice dated 17.8.2001 but the said notice has not been produced. In the absence of the notice of termination of tenancy on record, the learned Courts below could not have passed a decree for possession, holding that tenancy stands terminated.

Firstly in respect of the argument regarding notice, it may be pointed out that the defendant has given reply Exhibit D.16 dated 25.8.2001 to the notice sent by the plaintiffs terminating his tenancy. The said reply is sent through Shri T.D. Hans, Advocate, Bhiwani. In para No.1 of the reply to the said notice, the reply given by the counsel is that notice was received by his client on 20.8.2001. In the said reply, reference is also made to lease deed dated 5.3.1997 to the effect that no tenancy period is fixed under the said lease deed. Thus, the argument that the notice under Section 106 of the Transfer of Property Act, 1882, was not served upon the defendant is not sustainable, in as much as, it is categorically admitted by the defendant that the notice has been received by him.

The argument that lease in perpetuity was created vide lease deed dated 5.3.1997 is again not tenable in law. Admittedly, the said lease deed is an unregistered document. The period of lease is an essential condition of lease, therefore, such condition cannot be read into evidence being part of unregistered document.

No other point is urged.

Therefore, I do not find any illegality or irregularity in the

findings recorded by the Courts below, which may give rise to any substantial question of law.

Hence, the present appeal is dismissed in limine.

However, the decree for possession shall not be executed for a period of three months from today.

14-11-2006 (HEMANT GUPTA)
ds JUDGE